

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 21188 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy
of the judgment ? No

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ? No

5 Whether it is to be circulated to the civil judge
? No

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MAHAMMAD YAKUB @ BAVO MAHAMMADSAFI KURESHI -
Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
MR L.R. PUJARI, AGP, for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 20/12/2005

ORAL JUDGMENT

Mohammad Yakub @ Bavo Mahammad Safi Kureshi,
petitioner, has filed this petition challenging the

order of detention dated 3.10.2005 passed by the District Magistrate, Anand, under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "PASA Act"). The petition was filed on 18.10.2005 and it was moved on 21.10.2005 and this Court issued rule returnable within four weeks.

1. On behalf of the respondent Mr. L.R. Pujari, learned AGP, appears He has not filed affidavit. He has relied on the order of detention.

2. Ms. Banna Dutta, learned advocate on behalf of Mr. A.R. Shaikh for petitioner appears. She has invited my attention to the order of detention dated 3.10.2005. She has also invited my attention to the order of committal dated 3.10.2005 by which the petitioner has been sent to Sabarmati Central Jail on the same day. The learned advocate has also invited my attention to the grounds furnished by the authority in this case. From the record it has been stated that the petitioner has committed offence of prohibition within the jurisdiction of Anand. He has

committed five offences on 4.11.2003, 26.2.2004, 3.9.2004, 22.1.2004 and 3.9.2005 all under the Bombay Prohibition Act. It was also alleged that in one case he has sold 12 foreign liquor bottle for Rs. 3,275/-, and another case 72 foreign liquor bottle valued at Rs. 7,200/- and in another case 72 Indian Made Foreign Liquor valued at Rs. 6840/-. Statements of witnesses under Section 9(2) of the Act were not recorded. The learned advocate for the petitioner submitted that taking into consideration the totality of circumstances, there cannot be any breach of public order. There is only breach of law and order situation. In support of the same, she has relied on the judgement of the Hon'ble Supreme Court in the case of PIYUSH KANTILAL VS. COMMISSIONER OF POLICE, AHMEDABAD CITY & ANOTHER reported in AIR 1989 SC 491 and Division Bench Judgement of this Court in the case of ASHOK JIVRAJ @ JIVABHAI SOLANKI VS. POLICE COMMISSIONER, SURAT & ORS., reported in 2000(1) GLH 393.

3. The learned advocate has submitted that in this case there is a delay in passing the order. The

last offence is registered on 3.9.2005 and the order of detention is passed on 3.10.2005. Another contention is that translation of relevant documents has not been supplied and also non-supply of bail order. There is no statement regarding breach of public order but only violation of law and order.

4. On the other hand Mr. L.R. Pujari, learned AGP appears on behalf of the respondents. He relies on the order of detention passed by the authority. His submission is that large quantity of liquor recovered from the petitioner indicates that the activities of the petitioner is prejudicial to maintenance of public order. It was stated that the petitioner is dealing in illegal liquor business and he is disturbing the public order, public peace, public health and it is likely that continuance of his anti-social and boot-legging activities may cause grave or widespread danger to life, property and public health.

5. Having heard learned counsel for the parties and perused the record of the case, I am of the view

that only registration of criminal cases alone cannot be said to be sufficient enough to arrive at subjective satisfaction to the effect that the activities of detenu are prejudicial to the public order. The power to detain a person under PASA Act is not based on simple facts about registration of crimes or the activities of theft. There has to be nexus and link for such activities with disturbance of public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities even affect tempo of normal life of the community in the locality or disturb the general peace and tranquility or create a sense of alarm and insecurity in the locality.

6. In view of the above and considering the facts of the case, the petition is allowed. The impugned order of detention dated 3.10.2005 is quashed and set aside. The petitioner Mahammad Yakub @ Bavo Mahammadsafi Kureshi is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M. MEHTA, J)

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